

March 26, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554  
*Via Electronic Filing*

Re: Ex Parte Communication, WC Docket No. 07-245; GN Docket 09-51

Dear Ms. Dortch,

PCIA—The Wireless Infrastructure Association and The DAS Forum, a membership section of PCIA,<sup>1</sup> write today to provide an update on the application of the Federal Communications Commission's ("FCC") *Report and Order and Order on Reconsideration* ("Order") on pole attachments.<sup>2</sup> While the Order is under a year old, distributed antenna system ("DAS") providers observe increased efficiencies in the pole attachment process including lower, more equitable rates, increased use of pole tops and improved predictability in the design and implementation of DAS.

Broadly, members of The DAS Forum have found that interactions with utilities in FCC states have been significantly easier and more efficient since the Order was implemented. Predictability of the attachment terms has increased the efficiency in designing and proposing networks for customers because the attachment rates are known at the beginning of the process. Additionally, the improved access to pole tops has provided significant benefits to the performance of the network.

On the issue of lowered rates, our membership reports varied experiences. In its *ex parte* letter, NextG Networks stated that it "has been able to modify or is in the process of modifying nine pole attachment agreements to reflect an attachment rate for wireless equipment equal to the

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<sup>1</sup> PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate over 150,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless services. PCIA seeks to facilitate the widespread deployment of communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996. The DAS Forum, a membership section of PCIA, is dedicated to the development of DAS and small cell solutions as elements of the nation's wireless infrastructure. The DAS Forum membership includes virtually every major neutral host outdoor and indoor DAS provider, as well as manufacturers of equipment used in the wireless service sectors, and several commercial mobile radio service carriers currently deploying DAS as part of their networks.

<sup>2</sup> *In re Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, FCC 11-51 (Apr. 7, 2011)

new telecom rate with a multiplier when the antenna occupies more than one foot of space.”<sup>3</sup> One utility company reduced past fees by approximately \$1 million and also lowered its wireless rate to the telecom rate.<sup>4</sup> Additionally, NextG Networks states that “[a]t least eleven pole owners have lowered their fiber rates to the new telecom rate at NextG’s request, with a much greater number expected to come into compliance for 2012.”<sup>5</sup> ExteNet Systems Inc. has also found that many pole owners are adjusting their rates for wireless equipment, and it is continuing to work with those who have not yet been responsive.

Membership also had some early successes in non-FCC states and hopes that the terms of the Order are quickly adopted throughout the country. In Ohio, a utility company offered NextG Networks “a very reasonable rate for wireless attachments and allow[ed] pole top antennas on some poles, even though that utility had a long-standing position of not allowing any wireless attachments.”<sup>6</sup> Even though the Order is not controlling in non-FCC states, it is our hope that state regulatory agencies will use it as a guide in their own regulatory proceedings, such as the docket currently open in Connecticut.<sup>7</sup>

Access to pole tops has provided significant benefits to network performance, which is critical to increasing the efficiency of designing, selling and constructing networks. Five electric companies who had previously refused to grant access to pole tops are now working collaboratively with NextG Networks to develop construction standards.<sup>8</sup> The increased access to the pole top will improve network efficiencies by lowering the overall node count required to cover the same geographic area.

The Order has and will continue to have a significant impact on access to utility poles. It provides a critical tool when working with a minority of electric utilities who have historically been reluctant to provide access to their poles. Some of these utilities are trying to delay or dissuade access by:

- not providing a pole attachment agreement because they are still creating/revising their template agreement to conform with the Order;

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<sup>3</sup> Letter from Norine Luker, Senior Director Utility Administration, NextG Networks, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245 at 1 (filed Feb. 22, 2012).

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, *Petition of Fiber Technologies Networks, L.L.C. For Authority Investigation of Rental Rates Charged to Telecommunications Providers by Pole Owners*, PURA Docket No. 11-11-02 (filed Jan. 30, 2012); Reply Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, *Petition of Fiber Technologies Networks, L.L.C. For Authority Investigation of Rental Rates Charged to Telecommunications Providers by Pole Owners*, PURA Docket No. 11-11-02 (filed Feb. 21, 2012).

<sup>8</sup> *Id.*

- delaying beginning negotiations under the pretense that the Order will be overturned by the Commission or in court, which is especially true with regards to requested wireless rate reductions;
- charging “administrative fees” ranging from \$2,500-\$10,000 to begin pole attachment agreement negotiations;
- attempting to obtain an annual minimum fee of \$5,000-\$10,000 for wireless attachments;
- increasing permit application fees to unreasonable levels to extract additional money from wireless attachers; and
- claiming that pole top wireless attachments may be charged an unlimited “market rate” (e.g., \$1,500).

These examples arise from a minority of pole owners, and the impact of the Order is overwhelmingly positive. Membership is confident that the new efficiencies and uniformity will grow and continue to help avoid disputes and reduce the time to resolution with electric utilities.

Unfortunately, local governments frustrate much of the success of the Order by interfering with the attachment of wireless equipment to utility poles by subjecting it too lengthy discretionary zoning process. These issues are highly inhibitive to the exercise of our members’ rights to attach to utility poles under 47 U.S.C. § 224 and decrease the benefits of the Order that are now being felt across the industry. We strongly encourage the Commission to continue its support for increased wireless voice and broadband services in the public right of way.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter will be filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Zachary Champ". The signature is fluid and cursive, with the first name "D." and last name "Champ" clearly distinguishable.

D. Zachary Champ  
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